

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.315 OF 1999

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DATED: 24.10.2007

Between:

Vemuri Rama Subbaiah

.. Petitioner

And

The A.P. Co-op. Tribunal,
Vijayawada, rep. by its
Chairman and others.

.. Respondents

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WRIT PETITION No.315 OF 1999

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ORDER:

This writ petition is filed questioning the order, dated 22.10.1998, passed in O.A.No.51 of 1996, on the file of the 1st respondent - A.P. Cooperative Tribunal, Vijayawada, whereunder surcharge proceedings, dated 10.06.1994, issued by the 2nd respondent against the petitioner initiating recovery of an amount of Rs.12,913/- together with interest @ 15% from 18.12.1971, were confirmed.

It appears, the petitioner was the Vice President of Ghantasala Primary Agricultural Cooperative Society, Ghantasala (presently known as Jaladeeswara Primary Agricultural Cooperative Society – 3rd respondent) and a surcharge order was passed against him on 01.10.1979 by the 2nd respondent - Deputy Registrar of Cooperative Societies, Machilipatnam. Challenging the said order, he had filed an appeal in O.P.No.4 of 1979 on the file of the Principal District Munsif's Court, Avanigadda, Krishna District. The said appeal was allowed on 15.04.1982 and the matter was remanded back for reconsideration with a specific direction to afford reasonable opportunity to the petitioner to represent his case by summoning the records etc. The petitioner complains that the 2nd respondent, having kept silent for more than 13 years, again passed an order on 10.06.1994, vide proceedings in Rc.No.1120/94A, holding him liable to pay an amount of Rs.12,913/- with interest at the rate of 15% per annum from 18.12.1971. Challenging the said proceedings, the petitioner again carried the matter in appeal in O.A.No.51 of 1996 before the 1st respondent - A.P. Cooperative Tribunal, Vijayawada, but the same was dismissed confirming the order of the 2nd respondent. The

petitioner contends that the 1st respondent Tribunal, without properly appreciating the facts and circumstances of the case, confirmed the orders passed by the 2nd respondent under Section 60 of the A.P. Cooperative Societies Act (for short 'the Act'). The petitioner further contends that the impugned order is liable to be set aside on the ground that when once the proceedings under Section 60 of the Act are initiated, the enquiry thereof should be akin to that of an enquiry before the Civil Court, as the Civil Court's jurisdiction is barred expressly in view of Section 121 of the Act and that the 2nd respondent has simply relied upon an enquiry report under Section 51 of the Act and passed an order under Section 60 of the Act, which is neither valid nor legal. Further, no independent enquiry has been conducted by the 2nd respondent to pass a decree for realization of the amounts. The 1st respondent Tribunal also could not properly appreciate the evidence on record and came to an erroneous conclusion.

While admitting the writ petition on 12.01.1999, interim suspension of the impugned order was granted on condition of the petitioner depositing half of the amount demanded, within four weeks from that date. The learned counsel for the respondents states that the said condition has been complied with by the petitioner.

So far as the merits of the case are concerned, I am of the opinion that the petitioner has not made out any case calling for interference of this court with the impugned order under Article 226 of the Constitution of India. It is an admitted fact that after conducting an enquiry under Section 51 of the Act, proceedings under Section 60 of the Act were initiated, and the petitioner was put on notice and thereafter the order under Section 60 of the Act was passed fixing a liability of Rs.12,913/-

on the petitioner. Challenging the said order, when the petitioner preferred an appeal before the 1st respondent Tribunal, vide O.A.No.51 of 1996, the Tribunal, after detailed consideration of the contentions raised by the petitioner and after thorough perusal of the order impugned therein, dismissed the appeal refusing to interfere with the order passed by the 2nd respondent.

I am of the opinion that neither the order passed by the 2nd respondent nor the order passed by the 1st respondent suffers from any legal infirmity. The contention of the petitioner that the enquiry was based only on the report under Section 51 of the Act is not correct. May be the report submitted under Section 51 of the Act was the basis for initiating proceedings under Section 60 of the Act, but when the said proceedings under Section 60 of the Act were initiated, the petitioner was given full opportunity to defend himself and thereafter only the Surcharge Authority passed the order, which was rightly confirmed by the appellate authority after a detailed consideration. Thus, as stated above, no interference is called for by this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, the petitioner is granted three months time from the date of receipt of a copy of this order to deposit the remaining half of the amount ordered in the impugned order with the 3rd respondent Society. No costs.

C.V. RAMULU, J

24th October, 2007.

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